

# JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



**ADDRESS BY**

**THE HONOURABLE MRS JUSTICE R. MAKARAU**

**ON THE OCCASION OF THE OFFICIAL OPENING OF  
THE 2022 LEGAL YEAR ON 10 JANUARY 2022**

**MUTARE HIGH COURT**

**THEME:     *USE OF TECHNOLOGY TO ENHANCE  
EFFICIENCY AND THE RULE OF LAW IN THE  
JUDICIARY***

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**Mr. Mugadza and Mr. Ndlovu,**

Compliments of the New Season to you.

It is my singular honour to bring to you, the people of Manicaland, hearty felicitations from the Chief Justice, the Hon. Luke Malaba, who as you all know, is presiding over the opening of the 2022 Legal Year in Harare.

Allow me then, on your behalf, and on behalf of all the members of the Judicial Service here -present, to acknowledge the following dignitaries who have put aside their busy schedules and lofty duties, to be with us today:

- **The Hon. Nokuthula Matsikenyere, Minister of State for the Manicaland Province;** herein represented by **Mr. Seenza,** Secretary for Provincial Affairs and Devolution;
- His Worship, **Mr. Blessing Tandi,** the Mayor of Mutare;
- Mambo **Mutasa** and Mambo **Zimunya;**
- **Brigadier-General Chitsva,** Commander 3 Infantry Brigade of the Zimbabwe National Army;

- **Commissioner Makototse**, Zimbabwe Republic Police Officer Commanding Manicaland Province herein represented by **Assistant Commissioner Govo**;
- **Commissioner Chinobva**, Zimbabwe Prisons and Correctional Services Officer commanding Manicaland Province,
- Senior Government Officials here present;
- The Acting Town Clerk;
- Members of the Law Society of Zimbabwe and of the National Prosecuting Authority,
- Members of Law Based Civic Organisations,
- The Messenger of Court and last but not least,
- The Press.

I also wish to acknowledge the many Ladies **and Gentlemen** sitting in the tent outside, who are following these proceedings virtually. We are most grateful that you are with us today.

**Mr. Mugadza, Mr. Ndlovu and Distinguished Guests,** we were not able to gather as we have done here today to mark the official opening of the 2021 Legal Year due to the restrictions imposed in the public interest, to curb the spread of the *Covid -19* virus.

Today therefore, gives us cause not only to celebrate the official opening of the Legal Year but to acknowledge the grace of the Almighty who has brought us this far and has graciously granted us resilience as a people, and, protection as individuals against the ravages of the virus.

We, in the Judiciary therefore regard this occasion as special and we hope that you do so too.

In celebrating that it is the Almighty who has brought us this far, the Chief Justice wishes us to take a moment to remember all those who, unfortunately and untimely succumbed to the *Covid-19* virus. These include members of the Judicial Service, our friends, our relatives and fellow Zimbabweans. We as judges especially remember with fond memories, the sad and untimely passing on of Justice Clement Phiri from

*Covid-19* related causes. He was a judge of the High Court stationed at Harare.

May his and the souls of all the other Zimbabweans we lost to the virus rest in eternal peace.

**Mr. Mugadza and Mr. Ndlovu**, as you are aware, it is a time honoured tradition of the Judiciary that the Chief Justice takes the opportunity offered by the occasion of the official opening of the Legal Year to address you, the legal profession and also the generality of the people of Zimbabwe, on the challenges and opportunities that he, as Head of the Judiciary, faced in the year under review and, the challenges and opportunities that he foresees in the future. To this end, the Chief Justice has prepared a comprehensive speech which he is currently reading to the nation from Harare.

I have been favoured with a copy of his speech to share with you all. With your leave however, I will not proceed to read the entire speech to you. I assure you that the speech will be made available to all those who wish to have copies thereof, and, especially to our colleagues from the media.

To those who will not wish to read the speech for themselves or will not have the time to watch a video of the event in Harare from the JSC’s social media pages, I will run down the six (6) sub -topics on which the Chief Justice is addressing the nation. These are as follows:

1. The theme of the 2022 Legal Year which is: “**The Use of Technology to Enhance Efficiency and the Rule of Law in the Judiciary**”;
2. The Integrated Electronic Case Management System (**IECMS**);
3. JSC activities during the year 2021. These include Judicial appointments made during the period under review, the enactment of the High Court Rules, the launch of the Judicial Training Institute of Zimbabwe (**JTIZ**), collaboration by our judiciary with other judiciaries in the region during the period under review and infrastructure development and other JSC projects;
5. Challenges faced by the Judiciary. These includes disruptions to court business due to *Covid-19* infections, conditions of service for

members of the Judicial Service, and inadequate funding for the administration of justice; and finally ,

6. The Performance of the Courts.

With your leave, I will take a moment to comment briefly on one or two of the six (6) sub-topics that the Chief Justice is currently addressing the nation on.

### **The Theme of the 2022 Legal Year**

I turn first to the theme of the 2022 Legal Year.

**Mr. Mugadza and Mr. Ndlovu**, as you are once again aware, it is yet another tradition of the judiciary to dedicate a theme to each legal year. The theme acts as our North Star, always guiding us on the direction to take on the way forward and constantly reminding us to retrace our steps when we lose our way in the mist and fog of daily duties and routines.

As I have stated earlier, for the Legal Year 2022, the Chief Justice has chosen the theme: **“Use of Technology to Enhance Efficiency and the Rule of Law in the Judiciary.”**

The theme embraces three distinct areas of focus in the administration of justice which are, efficiency, the rule of law and the use of technology.

Efficiency in the administration of justice is a concept that is easier to define by its absence and is felt more when it is not there than when it is present. Whilst generally, customer satisfaction is the best indicator of efficiency, in the administration of justice, customer satisfaction is marked not necessarily by winning the case but by knowing the outcome of the court hearing without undue delay.

In the past, concern has been raised over delayed judgments from the courts. This was so even before the delays due to *Covid -19* induced restrictions began to manifest.

It is therefore, heartwarming and timely, to hear the Chief Justice advice the nation that during 2022, the judiciary is going to focus on enhancing efficiency by employing information and communications technologies.

As I indicated above when I listed the sub topics of his speech, the Honourable Chief Justice will advert to the disruptions caused to court business by *Covid-19* infections when he deals with challenges besetting the judiciary.

At this stage allow me to digress momentarily and commend members of the press who played an important role in informing the public on the closure of a number of courts during 2021. Whilst the news was alarming especially for us in the Judiciary, the reports were real and showed us the vulnerability of face- to- face court business.

For instance the closure of affected courts meant that bail applications could not be heard and deserving candidates had to spend unnecessary and unrecoverable time in custody because the affected courts could not open to process their applications.

I suppose debtors were the only litigants who were happy about the closure of courts as the dates of making payment were further delayed! For those involved in divorce actions I do not want to speculate about how

they felt over this development and the consequent delays in the handing down of divorce decrees.

The Chief Justice will report in his speech that for more than six (6) months of the year 2021, the courts were offering limited service to accused persons and litigants. This inevitably increased backlogs and further delaying the handing down of judgments.

Therefore describing the imminent opening of virtual courts as a welcome development in the circumstances becomes a monumental understatement.

The Chief Justice will further report that Mutare Magistrates' Court is one of the ten courts earmarked for a virtual court linked to the prison facilities and that such courts will be established during the course of 2022.

Allow me therefore, **Mr. Mugadza, Mr. Ndlovu and Distinguished Guests**, on your behalf, to congratulate the Honourable Chief Justice on his vision regarding the use of technology to enhance

efficiency in the courts, especially the establishment of virtual courts. This indeed is a giant leap in the right direction for the judiciary especially in view of the fact that 10 years ago, the judiciary hardly had any electronic equipment to talk about save the few aged word- processing units that were in the secretaries' offices.

I will once again digress and lightly reflect on the challenges and opportunities that the use of ICTs in court business will present to us in the legal profession. I recall a time, a long time ago if I may clarify, when we as lawyers in private practice prided ourselves in having efficient secretaries. We paid them well for that. We would dictate our letters or ask junior lawyers to present drafts for our approval.

The down side of our good life then was that we hardly became technical. We grew old and our fingers lost their nimbleness without us knowing how to switch on the secretary's computer.

As litigation and court appearances are going digital, we, the aged lawyers have to learn not only to switch that computer on but to press the

correct buttons when we appear before the court virtually, lest in error, we delete the image of the judge or worse still, delete our entire Heads of Argument!

For the young and nimble fingered lawyers, the adaptation to a new technology will not be an issue, judging from the time some of you spend on social media.

I wish to assure lawyers of my age that even we judges are undergoing training on how to use technologies in conducting court business. The Chief Justice has ever so gently persuaded us to learn the new technology, even in our advanced ages and if we can do it, so can every lawyer. There will be teething mistakes in the process but fear of making mistakes should never deter us from moving forward with the times.

I now turn and again briefly, to the appointments that were made to the bench during the period under review.

## **Judicial Appointments**

The Legal Year 2021 saw the formal separation of the Supreme Court from the Constitutional Court in fulfillment of the provisions of the Constitution. With the appointment of five permanent judges to the Constitutional Court who were all from the Supreme Court, there was need to appoint judges to the Supreme Court to replace the “lost” five. Mrs. Justice Hlekani Molly Mwayera, who was Senior Judge in charge of this Court, was one of the judges appointed to the Supreme Court. Manicaland has cause to be proud in her appointment to the Supreme Court. Her appointment is testimony of the quality of justice that this court delivered to you.

With the appointment of Mrs. Justice Mwayera to the Supreme Court, the Honourable Chief Justice deployed with effect from 1 November 2021, Justice Charewa to be Senior Judge in charge of this Court. He could not have made a better choice. I have no doubt whatsoever that

with her leadership and Justice Muzenda's industry, Manicaland will continue to enjoy quality justice delivery.

To Justice Charewa, I extend my hearty congratulations. I wish you not only success but fulfilment and contentment as you head and manage this station.

I now wish to turn to the performance of the Courts in Manicaland during the period under review.

### **Performance of the Courts**

I have spoken of disruptions to court business due to *Covid-19* and how the courts collectively lost **six (6)** months of operations. I have also spoken of how these disruptions caused backlogs in courts and contributed to delayed judgments. These comments do not apply to the Mutare High Court which posted impressive results during the course of the year. The court has no backlog. They are carrying over seven (7) pending cases into 2022. Seven (7) cases are not a backlog by any definition.

Over the past three years, Mutare High Court has managed to complete almost all the cases that are filed with its registry.

According to the statistics maintained by the Judicial Service Commission, the High Court achieved a clearance rate of **99%** in the Criminal Division and **97 %** in the Civil Division. Whichever way you look at it, this is first class performance for which the judges must be publicly applauded especially in view of the fact that the Chief Justice will report today that the general performance of the High Court, all stations put together, was not as good as in the previous year.

The Magistrates' Court also performed very well with the Regional Court managing an **85 %** clearance rate and the Provincial Court achieving a **91%** clearance rate in the criminal division. This was against a backdrop where the courts across the board received less cases in 2021 due to the closures of the courts and the restrictions that were imposed on the general populace to control the spread of the corona virus. I commend the two Regional Court Magistrates for their performance as their

clearance rate was well above the national average of **69%**. Theirs was **85%**.

The backlog rose significantly in the civil division of the Provincial Court but I have no doubt that all things being equal, this will be reduced during the course of the year.

Allow me then to congratulate and commend the Provincial Head, Mr. Ramaboea and his entire team for a job well done in difficult circumstances.

As I was studying the statistics from the different courts in Mutare, it struck me that the courts receive by far more criminal cases than civil cases across the board. It exercised my mind whether this is a good or bad trend. I have no immediate answers. It is however my hope that the low number of civil suits filed in the local registry is an indication that the people of this province are generally peace loving, which they are, and not that they are still taking their civil cases to Harare and are shying away from using this magnificent facility at their doorsteps.

My findings that the courts in Manicaland received more criminal matters than civil, seem to be confirmed by the figures from the Zimbabwe Republic Police which indicates that murders, rapes by juvenile, armed robberies, fraud and assault are on the increase.

<b>Crime</b>	<b>2020</b>	<b>2021</b>	<b>Trend</b>	<b>% Ach</b>
C/S 47 of CLCR Murder	66	83	+17	+26
C/S 65 of CLCR Rape (A)	214	155	-59	-28
C/S 65 of CLCR Rape (J)	412	421	+09	+02
C/S 126 of CLCR Robbery (P)	173	286	+113	+65
C/S 126 of CLCR Robbery (A-Firearm)	20	24	+04	+20
C/S 126 of CLCR Robbery (A-Other weapons)	76	33	-43	-57
C/S 131 of CLCR U/Entry	4193	4655	+462	+11
C/S 131 of CLCR Theft	7716	7125	-591	-08
C/S 131 of CLCR Theft from M/V	255	171	-84	-33
C/S 114 of CLCR Stock Theft	1687	1365	-322	-19
C/S 89 of CLCR Assault	4823	5652	+829	+17
C/S 136 of CLCR Fraud	243	568	+325	+134

## Conclusion

**Mr. Mugadza and Mr. Ndlovu,** I now must conclude my address.

The corona virus has wreaked havoc in all spheres of life. We in the Judiciary did not hope to be spared and we were not. We lost members of staff and we lost time. Our routines and habits have had to change. Our processes and way of doing business have to change for as long as we remain under threat of the virus and beyond. But we in the Judiciary do not walk alone. In the administration of justice we rely heavily on our key partners who collectively form our key stakeholders. These are:

- The National Prosecution Authority;
- The Zimbabwe Republic Police,
- the Zimbabwe Prisons and Correctional Service,
- the Law Society of Zimbabwe;
- the law based civic organisations and
- the media, for without the vital dissemination to the public of our proceedings and decisions, our efforts at explaining the law and how

it should regulate public behavior will come to naught. As the public do not read Law Reports.

I wish to acknowledge you all and extend the Chief Justice's gratitude for your support and cooperation in ensuring the smooth administration of justice.

As we respond to the adverse effects of the corona virus on our operations, it is therefore imperative that we all walk and work together in finding solutions that will minimize or completely eradicate disruptions to court proceedings, not only from the corona virus but from other future national misadventures and/or disasters.

But as usual in all that we do and try to do, we always enlist the benevolence of the Almighty, without whom we do not amount to much.

With your leave **Mr. Mugadza and Mr. Ndlovu**, I do declare the 2022 Legal Year open and request all of us to stand up as I call upon **Bishop Madiye** of the Methodist Church in Zimbabwe to lead us in prayer. **May we all rise!**